

MINUTES

**MONTANA SENATE
57th LEGISLATURE - REGULAR SESSION
COMMITTEE ON NATURAL RESOURCES**

Call to Order: By **CHAIRMAN WILLIAM CRISMORE**, on February 9, 2001
at 3:00 P.M., in Room 317-B/C Capitol.

ROLL CALL

Members Present:

Sen. William Crismore, Chairman (R)
Sen. Dale Mahlum, Vice Chairman (R)
Sen. Vicki Cocchiarella (D)
Sen. Mack Cole (R)
Sen. Lorents Grosfield (R)
Sen. Bea McCarthy (D)
Sen. Glenn Roush (D)
Sen. Bill Tash (R)
Sen. Mike Taylor (R)
Sen. Ken Toole (D)

Members Excused: Sen. Ken Miller (R)

Members Absent: None.

Staff Present: Nancy Bleck, Committee Secretary
Mary Vandebosch, Legislative Branch

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: **SB 376, 2/5/2001**
Executive Action: None.

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HEARING ON SB 376

Sponsor: SEN. BOB DEPRATU (R), SD 40, Whitefish

Proponents: Bud Clinch, Director, Montana Department of

Natural Resources and Conservation

**Roy Andes, Vice-President and Legal Counsel,
MONTRUST**

**Jane Karas, Flathead Valley Community College
Elizabeth Harris, Jobs, Now, Inc., Flathead Valley
Roger Halver, Montana Association of Realtors
Turner Askew, representing himself
Tommy Butler, Legal Counsel, Director's Office
Legal Staff, Montana Department of Natural
Resources and Conservation
Clive Rooney, Chief, Special Use Management
Bureau, Montana Department of Natural Resources
and Conservation**

Opponents:

**Brace Hayden, Board Member, Citizens For A Better
Flathead**

**Anne Hedges, Montana Environmental Information
Center**

Don Schwennesen, Citizens For A Better Flathead

Alan Nicholson, representing himself, Helena

John Wilson, Montana Chapter of Trout Unlimited

Janet Ellis, Montana Audubon Society

Steve Kirchhoff, representing himself

Steve Kelly, Friends of the Wild Swan

Richard Parks, Northern Plains Resource Council

**Candace Durran, representing herself and her
children**

**Bizz Green, representing herself, Sweetgrass
County**

Wade Sikorski, representing himself, Fallon County

**Mary Fitzpatrick, Northern Plains Resource
Council, Billings**

**Pat Dopler, Carbon County resident, former city
counselor, former member of the county and city
planning boards, and a Red Lodge business owner
Nellie Israel, Carbon County**

Jeff Barber, Montana Wildlife Federation

Informational Witness:

**George Ochenski, representing the
Confederated Salish-Kootenai Tribes**

Opening Statement by Sponsor:

**SEN. BOB DEPRATU, SD 40, Whitefish, stated SB 376 exempted
certain actions of the Department of Natural Resources and
Conservation (DNRC) and the Board of Land Commissioners from
environmental review requirements. It would amend section 77-1-**

121 of the Montana codes. This bill would provide an immediate effective date and a retroactive applicability date. He said this legislation would allow the DNRC to participate in local land use planning processes in good faith and not have to prepare duplicate Montana Environmental Policy Act (MEPA) documents to cover local government decision-making and processes. Most importantly, the DNRC would still be required to produce a MEPA document for the proposed use of any lease, license or permit for any actual authorization to use state lands. The state would still be required to analyze the proposal at hand for impacts and consistency with the neighborhood plan. Under present law, MEPA would be triggered by entering into an agreement with the local planning entity. **SEN. DEPRATU** stated it would be better to let the local planning entities decide what the local people wanted, then, if a project was proposed, the DNRC would do a full MEPA review before transferring the title.

Proponents' Testimony:

A letter from **Jerry Sorensen, Big Fork, EXHIBIT(nas33a01)**, in favor of **SB 376**, was distributed.

A letter from **Robert Horne, Jr. AICP, Chairman, Legislative Committee, Montana Association of Planners C/O Butte Silver Bow County Planning Office, EXHIBIT(nas33a02)**, supported **SB 376**.

Bud Clinch, Director, Montana Department of Natural Resources and Conservation (DNRC), stated this bill addressed a controversy associated with state trust land management. The decision rendered in that litigation had ramifications to several other DNRC actions state-wide. **Mr. Clinch** proposed page one, line 15, of the bill, "or other authorization for use of state lands" be stricken. The remainder of the bill provided when DNRC implemented those actions with local governments, the actions would be exempt from the MEPA. **Mr. Clinch** explained a map of the 5.2 million acres of state school trust lands managed by the DNRC and stated the DNRC provided substantial revenue annually from the management of those lands. **Mr. Clinch** showed a simulated check presented to the Superintendent of Public Instruction last year in the amount of \$44,438,000 generated from the state school trust lands. He stated this bill rectified situations and impacts to other tracts besides section 36 in Kalispell. **Mr. Clinch** provided an aerial photograph of a tract of land in Billings showing scattered tracts of state school trust lands and the encroachment of the city around those lands. Historically, the DNRC had managed those lands for agricultural and grazing usage, but land use patterns had changed. **Mr. Clinch** showed another aerial photograph of a land area near Bozeman illustrating commercial development that had taken place in the

area. The DNRC entered into negotiations with local planning and zoning people to determine what type of activity would be acceptable to them. The DNRC received a proposal for development, implemented a MEPA process and issued a lease. Today, a professional mall exists there producing approximately \$40,000 of income to the State School Trust Fund. As a result of the recent district court decision regarding section 36 near Kalispell, the process followed on the Bozeman development was ruled unlawful and could be in jeopardy. **Mr. Clinch** provided a map of Kalispell showing the development in section 36. When section 36 was under grain productions, the DNRC received between \$10,000 and \$20,000 in revenue for the entire section. By separating out the southeast corner, the lease that the DNRC currently had with the city of Kalispell for this one corner generated \$40,000 itself. Later, the DNRC learned there was growing interest in terms of development of section 36. **Mr. Clinch** used another map of section 36 showing the southeast corner where sports, soccer and ball fields were fully developed by the city of Kalispell. The DNRC began to look at how they would proceed with the rest of the development of section 36. The DNRC initiated a planning process for the development of that section. **Mr. Clinch** provided a copy of the Section 36 Planning Process, **EXHIBIT(nas33a03)**. As a result of that planning, a neighborhood plan emerged, **EXHIBIT(nas33a04)**. He believed the many meetings indicated the community's involvement. He said opponents would say this bill was intended to circumvent the MEPA, private citizen input, and local zoning and planning. He added nothing could be further from the truth. In fact, the DNRC thought **SB 376** would improve the ability of the public to be involved. The neighborhood plan was not an authorization for anyone to use the state school trust land, as District Judge Sherlock had contended in his order. It was, in fact, a list of restrictions the DNRC voluntarily agreed to place upon themselves for future development. The decision maker in that process was not the DNRC; it was the local planning and zoning board. **SB 376** was not about forcing the DNRC to do the MEPA; it was about forcing local governments and private property owners to be involved in the MEPA process as well. **Mr. Clinch** offered **EXHIBIT(nas33a05)**, MEMORANDUM OF UNDERSTANDING, stating this was important because of allegations about the DNRC's unwillingness to participate in the MEPA process. He offered it as further evidence to the DNRC's commitment to be subject to both local zoning and planning. He added the issue today was when was the appropriate time to do the MEPA analysis; at the beginning of some very expansive project by the local county planning and zoning decision document, or when the DNRC actually proposed to go forth with an action. **Mr. Clinch** thought it was important to review the judge's decision and document associated with that, **EXHIBIT(nas33a06)**, because the specific language in that court

order was at issue today. He read from page ten, where the judge's order stated, although the defendants suggested the MEPA was not triggered in this case, pursuant to 77-1-121, the clear language of the statute suggested otherwise. The judge had printed the relevant statute and in emphasis, highlighted the words "for other authorization for use of state lands". The judge followed up with an explanation saying the neighborhood plan in the MOU represented a proposal for action which clearly fell under the meaning "for other authorization for use of state lands". The department had approved the neighborhood plan and because the judge interpreted it would likely cause significant environmental impacts, a MEPA analysis was required. Since **Mr. Clinch** was the drafter of that language two years ago, he explained the use of the words "or other authorization for use of state lands" was not the intention for that interpretation. **Mr. Clinch** told the committee **Glenn Neier, City Attorney, Kalispell**, drafted a memo stating "SB 376 does nothing to change the position of the state of Montana, at least with the local government regulations". If local governments had no control over state agency decisions, then the DNRC was exempt from the MEPA review and the DNRC would have broad authority to develop state owned property without having the duty to disclose much in the way of anticipated impacts. **Mr. Clinch** agreed this law did not attempt to bind the DNRC to local zoning requirements; however, the DNRC's track record showed they had been willing to comply with those in a very good faith method in the past. In fact, the DNRC would perform the MEPA review at the appropriate time they had a specific action they could analyze for meaningful impacts. Should the DNRC be held to the law as it stood right now, it could have a ramification on existing projects presenting a never-ending loop when a MEPA review was done on a neighborhood plan. The DNRC could come to a decision in a MEPA process at the front end of things that would be inconsistent with what the local county zoning people would even allow. The DNRC thought the way the law was not only enhanced public involvement, but was also "smart government". It reduced duplicating actions and encouraged the department to be involved with the local zoning processes. More importantly, he thought it prevented the opponents from using the MEPA to invalidate the local decisions.

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Roy Andes, Vice-President and Legal Counsel, Montanans For The Responsible Use Of The School Trust or MONTRUST, supported SB 376 for the reasons that **Director Clinch** had already suggested. **Mr. Andes** said this bill put trust lands on a par with all local private lands in terms. Local private lands were not subject to the MEPA but were subject to local zoning and land use decisions and this bill would put the DNRC in the same status. It did not

exempt the DNRC's actions from the MEPA so there still was an inequity in making procedural demands upon the disposition of trust lands not made upon private lands. He expressed concerns about those kinds of procedural constraints being imposed upon trust lands not imposed upon private lands. He said there were substantial issues remaining without **SB 376** in place. **Director Clinch** indicated it was questionable whether trust lands should be subject to local review. Since they were subject to local review, it made sense the local reviewing body had a chance to do so before the department made decisions about what it was going to do.

Jane Karas, Flathead Valley Community College, stated the college believed school trust lands managed by the State Land Board should consider the highest and best purpose to advance educational workforce pending objectives for Montana students. The DNRC was not opposed to the MEPA analysis but had agreed to do the MEPA analysis as the projects were identified rather than in the initial phase of the planning. **Ms. Karas** urged support of **SB 376**.

Elizabeth Harris, President, Jobs Now, Inc., told the committee because of the nature of planning and the need for flexibility, **SB 376** would give the DNRC something to analyze regarding social, economic, and environmental impacts.

Roger Halver, Montana Association of Realtors, urged support of **SB 376**.

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Turner Askew, Whitefish, representing himself, stated **SB 376** would allow studying that which was intended to be done and not that which was in an early phase of the planning process.

Opponents' Testimony:

A letter from **Don Spiv, Whitefish**, was distributed **EXHIBIT(nas33a07)** stating opposition to **SB 376**.

Brace Hayden, Citizens For A Better Flathead, spoke in opposition **EXHIBIT(nas33a08)**. **Mr. Hayden** also submitted letters, **EXHIBIT(nas33a09)**, **EXHIBIT(nas33a10)**, **EXHIBIT(nas33a11)**, **EXHIBIT(nas33a12)**, from local businesses and local landowners that opposed the bill but could not be here to testify.

Anne Hedges, Montana Environmental Information Center, stated this bill was about every area within a ten-mile radius around

communities in Montana that encroached on state school trust lands. She said MEPA intended for state agencies to use a systematic, interdisciplinary approach that would ensure the integrated use of the natural and social sciences and the environmental design art in planning. By removing the language on the first page, line 15, any type of planning would now be exempted from the DNRC having to comply with MEPA. **Ms. Hedges** said analysis should be done once the DNRC committed itself to a plan. After going through the administrative process, MEDIC was concerned and went to court stating the DNRC needed to comply with the MEPA in its entirety. **EXHIBIT (nas33a13)** was offered regarding environmental impact statements as defined in 75-1-201. **Ms. Hedges** stated for the DNRC to analyze development proposals on a lease-by-lease basis would ignore the importance of the effects of potential developments of section 36 as a whole. The court decision referenced the DNRC's commitment in September 1999 to engage in a MEPA analysis on the entire section. She added **Clive Rooney** said it was the DNRC's intention to do an analysis on the entirety of the project which would be conducted before the MOU was signed. The lawsuits arose when the MEDIC found the MOU was signed before the DNRC engaged in a MEPA analysis. During the pending lawsuits, the MEDIC approached the DNRC about settling the lawsuit so the technology park could get on the ground, as the MEDIC understood it was a good idea for the community. The MEDIC never reached a resolution with the DNRC and were told the DNRC wanted the court to decide the issue. The court decided the issue in MEDIC's favor. **Ms. Hedges** stated she sent the DNRC a letter, **EXHIBIT (nas33a14)**. She expressed concern about the idea of residential development. She stated the DNRC got involved in a residential development in Billings previously which did not work for them. She distributed and explained **EXHIBIT (nas33a15)**, Transition Lands Plan. **Ms. Hedges** wondered why such a large portion of land in the neighborhood plan involved residential development. The MEDIC was seriously concerned for the state and about local control. **Ms. Hedges** questioned who decided the conflict issue since the DNRC was statutorily exempt from zoning for most subdivision review and under this bill also from the MEPA. **Ms. Hedges** said Washington state reported they had done these types of developments on a scale of one to five acres, whereas the state of Montana was talking about developing approximately 500 acres. **Ms. Hedges** wondered if the state had the capability and staff available to manage the leasing structure with many lessees. **Ms. Hedges** distributed a letter from Glen Neier, City Attorney, Kalispell, **EXHIBIT (nas33a16)**, which **Mr. Clinch** referred to earlier. The MEDIC had constitutional questions and legal concerns about retroactivity. In summary, this bill assumed decisions between state and local government would always be amicable. Under this

bill, the DNRC would be exempt from all local regulation and MEPA.

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Don Schwennesen, Citizens For A Better Flathead, stated his group was concerned about section 36 because it was a big piece of land which would almost double the amount of commercial land already zoned in Kalispell. It also represented a change for the state from leasing barley and selling timber to the land development business on a major scale. **Mr. Schwennesen** said the state had the potential for competing against private sector people who had invested a lot in their businesses and their buildings. He distributed **EXHIBIT(nas33a17)**, concerning the possibility of opening a road across from state land to a proposed gated community and **EXHIBIT(nas33a18)**, an editorial from the Daily Interlake. **Mr. Schwennesen** urged the committee to carefully consider this proposed legislation.

Alan Nicholson, representing himself, said it was inappropriate to eliminate the MEPA requirements for studying the environmental, social and economic impacts of a total piece of property. As a private developer, he was subject to the local rules and regulations for zoning and building. The DNRC was essentially exempt from any legal requirement to do much planning at all. He told the committee MEPA requirements were straightforward in using a systematic, interdisciplinary approach and need not unnecessarily delay appropriate development. **Mr. Nicholson** stated it would be an economic asset to the community and the state to keep the current process with the MEPA requirements.

John Wilson, Montana Chapter of Trout Unlimited, said his group interpreted the striking of the language on line 15 of this bill to mean all planning decisions, made by the State Land Board or the DNRC, would be exempt from review under MEPA, not just development planning. As a result, his group believed the overall cumulative environmental impact of a plan developed by the DNRC, would not receive citizen input or environmental review. He offered **EXHIBIT(nas33a19)**, an article in the Independent Record dated March 21, 2000. **Mr. Wilson** stated his group did not oppose the developments but opposed the lack of comprehensive review.

Janet Ellis, Montana Audubon, opposed SB 376 **EXHIBIT(nas33a20)** and distributed MEPA Statutory Exemptions **EXHIBIT(nas33a21)**.

Steve Kirchhoff, representing himself, reminded the committee that all impacts of SB 376 would be absorbed locally because land

development was a local issue. Exempting the MEPA review would take the local voice out of the process and put the public in a position of having to trust the state government. Often, the local level already implemented growth policies and zoning regulations that reflected the will of the people. **Mr. Kirchhoff** encouraged the committee to not exempt the DNRC from the MEPA analysis.

Steve Kelly, Friends of the Wild Swan, said the proper time and the scope of MEPA was the intent of the law passed in 1971. He wondered what had changed for these agencies and a handful of developers to not comply with the law. The exemptions from the MEPA had not led to the benefits of increased prosperity. His group recommended section 77-1-121 had not proven to be beneficial to the state of Montana or in the public interest and should be returned to section 75-1 where it said to refer to the MEPA initially on any proposal.

Richard Parks, Northern Plains Resource Council, opposed this bill for reasons already demonstrated.

Candace Durran, representing herself and her two children, stated she was intimately acquainted with the lack of funding in education in the state. While she applauded the DNRC seeking creative ways to optimize income on state lands, she believed this legislation was a reaction to a specific lawsuit and would not serve the state well. She said the state had time to assess cumulative impacts over the long term to ensure our children and grandchildren would not have to deal with unwise land use because the state acted without forethought in the heat of the moment.

Bizz Green of Sweetgrass County, representing herself, stated she was concerned about how the land was developed in Montana. She worked hard to discourage an appropriate sprawl in her community.

Wade Sikorski of Fallon County, representing himself, stated MEPA was an important part of Montana laws and urged the committee not to weaken it.

Mary Fitzpatrick, Northern Plains Resource Council, Billings, stated she was very concerned about anything that would limit public participation in government.

Pat Dopler, Red Lodge, representing himself, stated opposition to SB 376.

Nellie Israel of Carbon County, Northern Plains Resource Council, urged the committee to oppose this bill.

Jeff Barber, Montana Wildlife Federation, opposed **SB 376** because it was an important issue for the DNRC which they should have brought before the Environmental Quality Council to be a part of their study. He asked for careful consideration of this legislation.

Informational Testimony:

George Ochenski, representing the Confederated Salish-Kootenai Tribes, stated several concerns: (1) it appeared planning could be conducted on a broad scale for the siting on state lands of such things as subdivisions, dams, power plants, landfills, industrial incinerators, cattle feed lots, and hazardous waste disposal sites without having to consider the environmental or economic effects, (2) it was unclear what the DNRC and the State Land Board would be exempt from, and (3) it appeared that **SB 376** could allow the planning of a hazardous waste dump on state lands around the Nine-Pipe National Wildlife Refuge on the Flathead Indian Reservation without having to analyze the economic or environmental affects and that the State Land Board and the DNRC would not have to consider the local or tribal planning or zoning concerns at all.

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Questions from Committee Members and Responses:

SEN. MIKE TAYLOR asked **Tom Butler** about **SB 376** taking local control out of the process in development of state lands and local people having no input on how these lands would be developed. **SEN. TAYLOR** asked **Mr. Butler** to comment on the letter from **Glen Neier, City Attorney, Kalispell**, that said state land use was largely exempt from subdivision review and largely exempt from zoning. **Mr. Butler** responded under 76-2-402, the DNRC was required to pull the zoning notice whenever it was attempting to change the use of land from the current use, but local entities were powerless under current law to change or control zoning of the state lands. Likewise, under 76-3-205 there was no subdivision review and the DNRC, in that instance, had shown a good faith attempt to involve itself in the local land use planning process. The real question to be considered was when and how the MEPA was triggered, when the most effective and efficient point for the MEPA to be triggered was and what was problematic about the January 5, 2000, decision by District Judge Sherlock. Almost all MEPA and NEPA case law required a concrete proposal with something physical for an agency to analyze. **SB 376** required, before a spade full of dirt was turned, an adequate MEPA review be conducted. What he felt was glossed over here was

that simultaneously, the State Board of Land Commissioners had committed to the preparation of a programmatic EIS state-wide on all state lands that might possibly be developed and would conduct a site-specific environmental review under MEPA, if and when a lease proposal was brought forward to the board.

SEN. TAYLOR questioned if this bill would take away local control and input, even though it was on state land. **Mr. Butler** responded that **SB 376** did not change existing law with respect to local control.

SEN. TAYLOR said he understood the tribal government had jurisdiction because it was a sovereign nation and that preceded any agreement that this bill would affect. **Mr. Butler** referred to a case in the Ninth Circuit United States Court of Appeals stating the reservation would have primacy over environmental reviews within the boundaries of the reservation.

SEN. TAYLOR asked **Bud Clinch** to comment on concerns of: (1) private citizens owning land next to state school trust lands, (2) about competition from the state in the land development business and (3) concerns the DNRC did not have the expertise nor the staff necessary for that business. **Mr. Clinch** responded that the DNRC and the state had somewhat been in the land business since statehood with a wide variety of projects that dated back nearly a century. Often, the DNRC found private sector individuals were proponents of this legislation because of the attractiveness of the lease arrangement on state trust lands as an incentive for their development programs. The DNRC had moved forth very slowly within the bounds of their own abilities. **Mr. Clinch** stated he was confident the projects he referred to in his opening remarks, as well as section 36, were well within the bounds of the expertise on staff. **Mr. David Greer** in the audience was brought on staff specifically because of his expertise for future development projects and he was actively involved in the Montana Planners Association. **Mr. Clinch** stated the DNRC had a variety of people with appraisal and leasing expertise and if the DNRC did not possess people with the expertise, the DNRC would move to the private sector and contract those services from the appropriate venues.

SEN. KEN TOOLE asked how the DNRC managed commercial and residential development on state school trust lands in negotiating leases, handling maintenance and if it was foreseen needing to contract out for services. **Mr. Clinch** responded those projects were initiated by the DNRC's awareness of the development potential as well as the private sector interest. Relative to the process, the DNRC could spend a lengthy amount of

time on how to go through a request for proposals within a list of parameters then ultimately selecting one of the proposals, potentially embarking on a MEPA process and do the analysis. In the event that the DNRC completed a MEPA analysis, the process would include both the proposal that was being presented as well as any other known impacts associated with the state land and any other known activities that were under concurrent consideration.

Mr. Clinch stated the DNRC was required to look at cumulative impacts according to MEPA. He stated there would be stipulations associated with maintenance in the contracts and leases which was no different than the stipulations on the tens of thousands of leases that the DNRC already managed state-wide on a wide variety of things. He said there would be provisions in the lease regarding maintenance that would subject the lessee to lease termination if not followed.

SEN. TOOLE wanted to know how deeply involved the DNRC would be in management of residential and commercial leases and would the DNRC be selling the residential houses. **Mr. Clinch** responded the DNRC was not eager to pursue residential development as it could be somewhat of a problematic situation. It was an entirely different relationship than the DNRC would have with a business proprietor.

SEN. TOOLE asked **Mr. Butler** if the DNRC was doing development in a community where there were local comprehensive plans and zoning ordinances, and would the DNRC not have to follow those plans and ordinances. **Mr. Butler** replied there was no legal component to cover the policy of the department except to just work with local land use planning in the very same manner as they had done in Bozeman and in Kalispell.

SEN. TOOLE asked how a conflict would be resolved between compliance with local zoning and the enabling statute and would the state be obligated to consider the role of government impacts. **Mr. Butler** answered this bill did not obligate the DNRC to any particular zoning aspect. However, under the policy that was currently implemented by the DNRC, the MOU itself would require the party to carry out those conditions under the neighborhood plan or whatever was agreed to between the DNRC and the local planning committee. **Mr. Butler** advised that 76-3-205 essentially exempted state lands from subdivision review to a limited degree. He added under 76-2-402 there was no zoning applicable to state lands, however a notice hearing must be held before the local planning commission.

SEN. TOOLE referenced line 26 of the third reading copy of the bill and asked **Mr. Butler** to speak about "in relation to". **SEN. TOOLE** wanted to know if this was going to be an ethic discretion by the DNRC to determine what "in relation to" meant. **Mr. Butler**

responded by providing history that originally section 77-1-121 was enacted in response to a case in Ravalli County regarding a grazing lease. The original intent of **HB 142** clarified the original intent of 77-1-121 that unless it was the state's action it would not be analyzed.

SEN. VICKI COCCHIARELLA asked **Bud Clinch** to comment on the planning process. **Mr. Clinch** responded that this bill merely required the DNRC could be involved, develop the neighborhood plan, and enter into an MOU without having to do the MEPA process where public comment and scoping were solicited to develop a range of alternatives in an analysis. The DNRC recognized the potential conflict early on and got involved in the planning process, found out what the acceptable levels were, and used that as a basis for the kind of proposals allowed and then did a MEPA analysis on the narrower scope of things, knowing that the DNRC would be consistent with the planning process.

SEN. COCCHIARELLA asked if there was something in this legislation stipulating when the MEPA review was done and it triggered the requirement of an EIS, the EIS would automatically be required only on part of the development. **Mr. Clinch** stated that was standard MEPA law. If the level of significance required an EIS be done, the DNRC would do that EIS and **SB 376** would not change that. This bill was intended to clarify when the department was dealing with the local planning board, the DNRC would not be held to do a MEPA review. **Mr. Clinch** added the DNRC thought it was most appropriate to come up with a process where the department could defer to local governments voluntarily engaging in the planning process, decide on the parameter of issues, then return to the subsequent process.

SEN. COCCHIARELLA asked **Anne Hedges** why she would not want the DNRC to be a participant at the table with local planning without being tied to an up-front MEPA review when they may develop, out of that, alternatives that were totally unacceptable to local planning. **Ms. Hedges** agreed the DNRC should be at the table in local decision making. THE MEDIC thought the DNRC was acting like a developer, making the business decision about what was appropriate on state lands without some kind of market analysis.

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SEN. BEA MCCARTHY asked **Bud Clinch** about the tract by Bozeman being developed commercially that was quite close to a residential area and stated her concern about the DNRC being exempt from the process. **Mr. Clinch** responded the DNRC did want to work through the process, adding the two projects by Bozeman

were already totally surrounded by other commercial development. He said they had multiple meetings with the Bozeman planning and zoning people to learn the parameters and the DNRC had the local consent. The DNRC those discussions did not trigger MEPA which forced the DNRC to be a decision-maker. He said once the DNRC had guidance from the local level, then the DNRC could go back to their own authority and solicit requests for proposals, and upon acceptance of a proposal, embark on the entire MEPA process and a decision.

SEN. MCCARTHY asked **Bud Clinch** if it would be easier to do the MEPA review before going out for the proposal. **Mr. Clinch** disagreed explaining, in the discussions the DNRC had with local planning and zoning, the landscape was wide open. If the DNRC were to do a MEPA on a potential development, the potentials were endless in terms of what would have to be analyzed rather than finding what the narrower scope of possibilities were, soliciting requests for proposal, then producing a meaningful document. **Mr. Clinch** stated even when the DNRC did subsequent developments, it would include the existing uses, the proposal, and any other activities under concurrent consideration.

SEN. MCCARTHY asked if the realtor development fees in the Gallatin Valley would apply to the state with developments. **Mr. Butler** clarified those fees were for a special assessment district and said the MOU signed between the DNRC, the State Land Board Commissioners, the Flathead County, and the city of Kalispell, stated the DNRC agreed whenever a lease was issued on section 36, the lessee would be required to bear those costs.

SEN. DALE MAHLUM commented about **Anne Hedges'** remarks that the DNRC was not supposed to make a decision on what happened in section 36 by Kalispell and stated that the DNRC was charged by the state to make those decisions. **Ms. Hedges** responded she meant she believed the DNRC should participate in the planning process; however, the plans were not binding except for in the subdivision review process because the DNRC was exempt from that process. She said growth policies, master or comprehensive plans were not binding on anybody but were a good tool for understanding what was desired for a property. Once the DNRC committed itself to comply with local planning through zoning through an MOU or any other process in which it bound its hands, the MEDIC was saying that the state was taking an action and committing resources and that more analysis was needed on market needs assessment, design standards, and criteria governing the whole property; transportation system plans to accommodate all the difference uses, very specific and more general issues that would make better business decisions, but still within the confines of local government.

SEN. MAHLUM asked **Bud Clinch** if the DNRC had hired a land use person with a lot of experience that could take care of some of these things. **Mr. Clinch** replied that was correct.

SEN. LORENTS GROSFIELD asked **Mr. Clinch** about the example of the tract near Bozeman along the interstate and wondered if the DNRC did the EIS or environmental analysis at the time they got a solid proposal for one of the parcels. **Mr. Clinch** responded that was correct, adding they would only solicit or accept proposals that were within the parameter of what the local zoning people had indicated as acceptable on that property.

SEN. GROSFIELD questioned if the DNRC got a proposal on one of the parcels in the Bozeman tract, would they then do the EIS on the whole tract of parcels. **Clive Rooney** responded the Bozeman tract was much smaller in scope than section 36 by Kalispell. The DNRC followed the local planning process for a major subdivision review and had received the approval for that pending construction of the improvements just like any private developer would. At that time, the DNRC did an environmental analysis on the eight acres, but not a detailed form of analysis which guessed all of the prospective uses that would come.

SEN. GROSFIELD confirmed the analysis was only being done on one lot at a time. **Mr. Rooney** responded a general document for the total lots was done, then a specific document would be done for specific actions on each of the eight lots.

SEN. GROSFIELD asked **Clive Rooney** if the document addressed compliance with the local zoning for commercial use. **Mr. Rooney** responded the general document looked at generic issues and issues like traffic and whether there was an ethanol plume.

SEN. GROSFIELD asked if the documents addressed design standards or market analysis. **Mr. Rooney** responded in this instance, the DNRC put out one lot for bid and had received a proposal to construct a state office building. The use was permissible within the zoning, the applicant was financially viable for completing the projects, and the lease established standards for the construction. Beyond that, there were covenants established, general standards, and specific standards within the lease reached for each specific building.

SEN. GROSFIELD asked if the leases were specific enough regarding design structures. **Mr. Rooney** responded they were.

SEN. GROSFIELD asked how the public could comment. **Mr. Rooney** responded there were two processes under which one could comment on a proposed action: (1) the local planning process and (2)

within the MEPA process which provided for public notice and if the issue warranted, public meetings and additional needs for public input.

SEN. GROSFIELD asked if the public could discuss issues or comment on the design standards with respect to the Bozeman tract. **Mr. Rooney** stated there was a public scoping process in which the public could suggest any issues they chose to have analyzed, then the DNRC must analyze those issues. He said whether or not that occurred in every case depended on people's interest.

SEN. GROSFIELD asked **Bud Clinch** about the DNRC having embarked on a state-wide programmatic EIS that could address the question of whether or not DNRC ought to be embarking in the development business near urban or rural areas. **Mr. Clinch** replied they were in the scoping process right now. He said **Mr. Rooney** advised we had a programmatic EIS that discussed this type of development activity across the state. They had six public hearings scheduled in March and the comment period would run for roughly two months.

SEN. GROSFIELD asked why the programmatic EIS process did not work. **Ms. Hedges** responded she thought it would work and the MEDIC were the ones that petitioned the State Land Board last March to do the programmatic EIS on development of state lands. The MEDIC thought this was a new arena for the DNRC to get into and they needed to make some decisions. She said much of this bill was premature. **Ms. Hedges** expressed praise for **Clive Rooney's** work and thought he would do a very good job on a programmatic EIS.

Closing by Sponsor:

SEN. DEPRATU closed by saying he felt this was a very public discussion on an issue that needed to be discussed. He believed that **SB 376** was a very good bill and that it protected everyone.

SEN. DEPRATU stated the lands discussed were "state" lands and were still getting a lot more scrutiny than if they were private.

ADJOURNMENT

Adjournment: 5:45 P.M.

SEN. WILLIAM CRISMORE, Chairman

NANCY BLECK, Secretary

WC/NB

EXHIBIT (nas33aad)